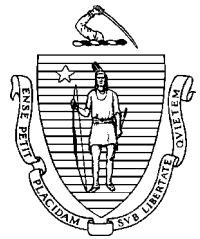


# Commonwealth of Massachusetts State Ethics Commission

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SUFFOLK, ss

COMMISSION ADJUDICATORY  
DOCKET NO. 713

## IN THE MATTER OF THOMAS E. BURNETT

### DISPOSITION AGREEMENT

The State Ethics Commission and Thomas E. Burnett ("Burnett") enter into this Disposition Agreement pursuant to Section 5 of the Commission's *Enforcement Procedures*. This Agreement constitutes a consented-to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, §4(j).

On October 7, 2003, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Burnett. The Commission has concluded its inquiry and, on August 3, 2004, found reasonable cause to believe that Burnett violated G.L. c. 268A, §23.

The Commission and Burnett now agree to the following findings of fact and conclusions of law:

#### **-Findings of Fact-**

1. During the time relevant Burnett was a member of the Whitman Board of Public Works ("the Board"). He became its chairman on June 11, 2002. As such, Burnett was a municipal employee as that term is defined in G.L. c. 268A, §1.

2. The Board oversees the Whitman Department of Public Works. The Board has a significant role in determining the terms and conditions of employment for DPW employees. For example, as to mechanics, the Board participates in their hiring and in determining whether performance has been satisfactory during the initial three-month probationary period. The Board can also discharge a mechanic for cause.

3. In early August 2002, Burnett asked a DPW mechanic whether he did work on the side and when he received an affirmative response, whether he would build and install a tailgate on Burnett's personal dump truck. The mechanic agreed to do the work. Shortly thereafter, Burnett brought a heavy piece of sheet metal to the DPW garage, which was to be used to make the tailgate.

4. When Burnett asked the mechanic to make the tailgate and when he left the sheet metal, Burnett failed to address whether the mechanic could use any DPW resources in connection with the work. Burnett knew that the necessary welding equipment and supplies were readily available at the DPW garage. He did not know or make any inquiry as to whether the mechanic could do the welding at home. It was the mechanic's understanding that under these circumstances he could use DPW resources to make the tailgate.

5. The mechanic made the tailgate over the course of several days in early August. It took the mechanic approximately 10 hours, eight of which were on town time, two on his personal time. He did all the work at the DPW garage using town equipment and welding supplies. The value of this town time and supplies was approximately \$350.

6. During this time, Burnett repeatedly called the mechanic's home and spoke either to the mechanic or the mechanic's wife asking when the tailgate would be finished.

7. In or about late August 2002, Burnett met the mechanic at the DPW garage and they, along with another DPW employee, installed the tailgate onto Burnett's truck. This took about 20 minutes and was done on DPW time.

8. Burnett and the mechanic did not discuss payment until after the work was completed. Ordinarily the mechanic would have expected to discuss and agree upon a price *before* commencing the work.

9. Burnett had reason to know that the mechanic would and did make the tailgate using the DPW garage, time, and supplies. This is because (1) Burnett brought the truck and sheet metal to the mechanic at the DPW garage, (2) Burnett was a member of and chair of the DPW Board, and as such had considerable power over the mechanic; and (3) Burnett failed to state that DPW resources should not be used.

10. DPW policy prohibits the use of the DPW garage, time or materials for personal vehicle repairs.

11. On August 30, 2002, Burnett paid the mechanic \$100 for the work. The mechanic's charge for this work would have ordinarily been \$300 for a private customer.

12. Burnett had reason to know that a fair price for making the tailgate was substantially in excess of \$100.

13. In or about September 2002, Burnett asked the mechanic to attach a hitch to and repair a wire cage on Burnett's flatbed trailer. Burnett supplied the hitch. The mechanic did the work at the DPW shop on his own time. Each job took an hour or two. The mechanic would have ordinarily charged \$100 for both of these jobs combined. Burnett, however, was not asked to pay and did not pay anything for this work.

14. Burnett had reason to know that but for Burnett's official position, the mechanic would not have given him the above-described discounted or free services.

#### **– Conclusions of Law –**

15. Section 23(b)(2) of G.L. c. 268A prohibits a municipal employee from, knowingly, or with reason to know, using or attempting to use his official position to secure for himself or others unwarranted privileges or exemptions which are of substantial value and which are not properly available to similarly situated individuals.

#### *Discounted services*

16. Obtaining a town mechanic's free or discounted services on one's private vehicle is a special

benefit or privilege. Thus, obtaining the tailgate from the mechanic for \$100 when he would have ordinarily charged \$300, and the hitch and welding repair work for free when he would have charged \$100, were privileges.

17. Each of these privileges was of substantial value in that they were worth \$50 or more.<sup>1</sup>

18. These were unwarranted privileges because there was no justification for Burnett receiving discounted or free services from a subordinate.

19. The mechanic gave Burnett these discounted and free services because Burnett was a member of and chair of the governing board of the mechanic's employer. In other words, by soliciting the mechanic to perform these services, Burnett used his power as a Board member and chair to secure these discounted or free services.

20. These privileges were not lawfully available to similarly situated individuals.

21. Therefore, by knowingly or with reason to know using his official Board chair position to secure discounts from a subordinate worth \$300 in total, Burnett violated § 23(b)(2).

#### *Misuse of Public Resources*

22. Having one's personal vehicle repaired using public resources is an unwarranted privilege.

23. Where the DPW mechanic put approximately eight hours of town DPW time into the project and used the DPW garage, equipment and welding supplies to do this private work, all valued in total at approximately \$350, the unwarranted privilege of using public resources for a private purpose was of substantial value.

24. These privileges were not properly available to similarly situated individuals.

25. As noted above, Burnett knew or had reason to know that the mechanic would infer that he could use DPW resources in making the tailgate where (1) Burnett had brought his truck and the tailgate materials to the DPW garage, (2) the welding equipment and supplies were there, (3) the work was for a Board member and chair, and (4) Burnett failed to tell the mechanic not to use DPW resources for this purpose. In other words Burnett had an obligation to make certain that under these circumstances the mechanic understood that this work was to be done without using any public resources. Burnett did not do that. In effect, Burnett used his public position as a commissioner to induce the mechanic to apply these public resources for Burnett's private benefit. By so acting, Burnett used his official position.

26. Therefore, by using his official position as the Board chair to have his private vehicle repaired using public resources, Burnett knowingly or with reason to know used his Board position to obtain unwarranted privileges of substantial value not properly available to other similarly situated individuals in violation of §23(b)(2).

#### **-Resolution-**

In view of the foregoing violations of G.L. c. 268A by Burnett, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Barnett:

- (1) that Burnett pay to the Commission the sum of \$2,000 as a civil penalty for violating G.L. c. 268A, §23(b)(2);
- (2) that Burnett pay to the Town of Whitman \$350, which represents the value of the town's public resources he obtained in so violating the law; and
- (3) that Burnett waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

## **STATE ETHICS COMMISSION**

**DATE:** September 30, 2004

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<sup>1</sup> Anything with a value of \$50 or more is of substantial value. *LIAM vs. State Ethics Commission*, 431 Mass. 1002 (2002).